

108TH CONGRESS
2D SESSION

S. 2238

AN ACT

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Bunning-Bereuter-Blumenaur Flood Insurance Reform
6 Act of 2004”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Congressional findings.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

Sec. 101. Extension of program and consolidation of authorizations.
 Sec. 102. Establishment of pilot program for mitigation of severe repetitive loss properties.
 Sec. 103. Amendments to existing flood mitigation assistance program.
 Sec. 104. FEMA authority to fund mitigation activities for individual repetitive claims properties.
 Sec. 105. Amendments to additional coverage for compliance with land use and control measures.
 Sec. 106. Actuarial rate properties.
 Sec. 107. Geospatial digital flood hazard data.
 Sec. 108. Replacement of mobile homes on original sites.
 Sec. 109. Reiteration of FEMA responsibility to map mudslides.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Definitions.
 Sec. 202. Supplemental forms.
 Sec. 203. Acknowledgement form.
 Sec. 204. Flood insurance claims handbook.
 Sec. 205. Appeal of decisions relating to flood insurance coverage.
 Sec. 206. Study and report on use of cost compliance coverage.
 Sec. 207. Minimum training and education requirements.
 Sec. 208. GAO study and report.
 Sec. 209. Prospective payment of flood insurance premiums.
 Sec. 210. Report on changes to fee schedule or fee payment arrangements.

3 **SEC. 2. CONGRESSIONAL FINDINGS.**

4 The Congress finds that—

- 5 (1) the national flood insurance program—
 6 (A) identifies the flood risk;
 7 (B) provides flood risk information to the
 8 public;
 9 (C) encourages State and local govern-
 10 ments to make appropriate land use adjust-
 11 ments to constrict the development of land

1 which is exposed to flood damage and minimize
2 damage caused by flood losses; and

3 (D) makes flood insurance available on a
4 nationwide basis that would otherwise not be
5 available, to accelerate recovery from floods,
6 mitigate future losses, save lives, and reduce
7 the personal and national costs of flood disas-
8 ters;

9 (2) the national flood insurance program in-
10 sures approximately 4,400,000 policyholders;

11 (3) approximately 48,000 properties currently
12 insured under the program have experienced, within
13 a 10-year period, 2 or more flood losses where each
14 such loss exceeds the amount \$1,000;

15 (4) approximately 10,000 of these repetitive-
16 loss properties have experienced either 2 or 3 losses
17 that cumulatively exceed building value or 4 or more
18 losses, each exceeding \$1,000;

19 (5) repetitive-loss properties constitute a signifi-
20 cant drain on the resources of the national flood in-
21 surance program, costing about \$200,000,000 annu-
22 ally;

23 (6) repetitive-loss properties comprise approxi-
24 mately 1 percent of currently insured properties but

1 are expected to account for 25 to 30 percent of
2 claims losses;

3 (7) the vast majority of repetitive-loss prop-
4 erties were built before local community implementa-
5 tion of floodplain management standards under the
6 program and thus are eligible for subsidized flood in-
7 surance;

8 (8) while some property owners take advantage
9 of the program allowing subsidized flood insurance
10 without requiring mitigation action, others are
11 trapped in a vicious cycle of suffering flooding, then
12 repairing flood damage, then suffering flooding,
13 without the means to mitigate losses or move out of
14 harm's way;

15 (9) mitigation of repetitive-loss properties
16 through buyouts, elevations, relocations, or flood-
17 proofing will produce savings for policyholders under
18 the program and for Federal taxpayers through re-
19 duced flood insurance losses and reduced Federal
20 disaster assistance;

21 (10) a strategy of making mitigation offers
22 aimed at high-priority repetitive-loss properties and
23 shifting more of the burden of recovery costs to
24 property owners who choose to remain vulnerable to
25 repetitive flood damage can encourage property own-

1 ers to take appropriate actions that reduce loss of
 2 life and property damage and benefit the financial
 3 soundness of the program;

4 (11) the method for addressing repetitive-loss
 5 properties should be flexible enough to take into con-
 6 sideration legitimate circumstances that may prevent
 7 an owner from taking a mitigation action; and

8 (12) focusing the mitigation and buy-out of re-
 9 petitive loss properties upon communities and prop-
 10 erty owners that choose to voluntarily participate in
 11 a mitigation and buy-out program will maximize the
 12 benefits of such a program, while minimizing any
 13 adverse impact on communities and property owners.

14 **TITLE I—AMENDMENTS TO** 15 **FLOOD INSURANCE ACT OF 1968**

16 **SEC. 101. EXTENSION OF PROGRAM AND CONSOLIDATION** 17 **OF AUTHORIZATIONS.**

18 (a) BORROWING AUTHORITY.—The first sentence of
 19 section 1309(a) of the National Flood Insurance Act of
 20 1968 (42 U.S.C. 4016(a)), is amended by striking
 21 “through December” and all that follows through “, and”
 22 and inserting “through the date specified in section 1319,
 23 and”.

24 (b) AUTHORITY FOR CONTRACTS.—Section 1319 of
 25 the National Flood Insurance Act of 1968 (42 U.S.C.

1 4026), is amended by striking “after” and all that follows
 2 and inserting “after September 30, 2008.”.

3 (c) EMERGENCY IMPLEMENTATION.—Section
 4 1336(a) of the National Flood Insurance Act of 1968 (42
 5 U.S.C. 4056(a)), is amended by striking “during the pe-
 6 riod” and all that follows through “in accordance” and
 7 inserting “during the period ending on the date specified
 8 in section 1319, in accordance”.

9 (d) AUTHORIZATION OF APPROPRIATIONS FOR STUD-
 10 IES.—Section 1376(c) of the National Flood Insurance
 11 Act of 1968 (42 U.S.C. 4127(c)), is amended by striking
 12 “through” and all that follows and inserting “through the
 13 date specified in section 1319, for studies under this
 14 title.”.

15 **SEC. 102. ESTABLISHMENT OF PILOT PROGRAM FOR MITI-**
 16 **GATION OF SEVERE REPETITIVE LOSS PROP-**
 17 **ERTIES.**

18 (a) IN GENERAL.—The National Flood Insurance
 19 Act of 1968 is amended by inserting after section 1361
 20 (42 U.S.C. 4102) the following:

21 **“SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE**
 22 **REPETITIVE LOSS PROPERTIES.**

23 “(a) AUTHORITY.—To the extent amounts are made
 24 available for use under this section, the Director may, sub-
 25 ject to the limitations of this section, provide financial as-

1 sistance to States and communities that decide to partici-
 2 pate in the pilot program established under this section
 3 for taking actions with respect to severe repetitive loss
 4 properties (as such term is defined in subsection (b)) to
 5 mitigate flood damage to such properties and losses to the
 6 National Flood Insurance Fund from such properties.

7 “(b) SEVERE REPETITIVE LOSS PROPERTY.—For
 8 purposes of this section, the term ‘severe repetitive loss
 9 property’ has the following meaning:

10 “(1) SINGLE-FAMILY PROPERTIES.—In the case
 11 of a property consisting of 1 to 4 residences, such
 12 term means a property that—

13 “(A) is covered under a contract for flood
 14 insurance made available under this title; and

15 “(B) has incurred flood-related damage—

16 “(i) for which 4 or more separate
 17 claims payments have been made under
 18 flood insurance coverage under this title,
 19 with the amount of each such claim ex-
 20 ceeding \$5,000, and with the cumulative
 21 amount of such claims payments exceeding
 22 \$20,000; or

23 “(ii) for which at least 2 separate
 24 claims payments have been made under
 25 such coverage, with the cumulative amount

1 of such claims exceeding the value of the
2 property.

3 “(2) MULTIFAMILY PROPERTIES.—In the case
4 of a property consisting of 5 or more residences,
5 such term shall have such meaning as the Director
6 shall by regulation provide.

7 “(c) ELIGIBLE ACTIVITIES.—Amounts provided
8 under this section to a State or community may be used
9 only for the following activities:

10 “(1) MITIGATION ACTIVITIES.—To carry out
11 mitigation activities that reduce flood damages to se-
12 vere repetitive loss properties, including elevation,
13 relocation, demolition, and floodproofing of struc-
14 tures, and minor physical localized flood control
15 projects, and the demolition and rebuilding of prop-
16 erties to at least Base Flood Elevation or greater, if
17 required by any local ordinance.

18 “(2) PURCHASE.—To purchase severe repetitive
19 loss properties, subject to subsection (g).

20 “(d) MATCHING REQUIREMENT.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), in any fiscal year the Director may not
23 provide assistance under this section to a State or
24 community in an amount exceeding 3 times the
25 amount that the State or community certifies, as the

1 Director shall require, that the State or community
2 will contribute from non-Federal funds for carrying
3 out the eligible activities to be funded with such as-
4 sistance amounts.

5 “(2) REDUCED COMMUNITY MATCH.—With re-
6 spect to any 1-year period in which assistance is
7 made available under this section, the Director may
8 adjust the contribution required under paragraph
9 (1) by any State, and for the communities located
10 in that State, to not less than 10 percent of the cost
11 of the activities for each severe repetitive loss prop-
12 erty for which grant amounts are provided if, for
13 such year—

14 “(A) the State has an approved State miti-
15 gation plan meeting the requirements for haz-
16 ard mitigation planning under section 322 of
17 the Robert T. Stafford Disaster Relief and
18 Emergency Assistance Act (42 U.S.C. 5165)
19 that specifies how the State intends to reduce
20 the number of severe repetitive loss properties;
21 and

22 “(B) the Director determines, after con-
23 sultation with the State, that the State has
24 taken actions to reduce the number of such
25 properties.

1 “(3) NON-FEDERAL FUNDS.—For purposes of
 2 this subsection, the term ‘non-Federal funds’ in-
 3 cludes State or local agency funds, in-kind contribu-
 4 tions, any salary paid to staff to carry out the eligi-
 5 ble activities of the recipient, the value of the time
 6 and services contributed by volunteers to carry out
 7 such activities (at a rate determined by the Direc-
 8 tor), and the value of any donated material or build-
 9 ing and the value of any lease on a building.

10 “(e) NOTICE OF MITIGATION PROGRAM.—

11 “(1) IN GENERAL.—Upon selecting a State or
 12 community to receive assistance under subsection (a)
 13 to carry out eligible activities, the Director shall no-
 14 tify the owners of a severe repetitive loss property,
 15 in plain language, within that State or community—

16 “(A) that their property meets the defini-
 17 tion of a severe repetitive loss property under
 18 this section;

19 “(B) that they may receive an offer of as-
 20 sistance under this section;

21 “(C) of the types of assistance potentially
 22 available under this section;

23 “(D) of the implications of declining such
 24 offer of assistance under this section; and

1 “(E) that there is a right to appeal under
2 this section.

3 “(2) IDENTIFICATION OF SEVERE REPETITIVE
4 LOSS PROPERTIES.—The Director shall take such
5 steps as are necessary to identify severe repetitive
6 loss properties, and submit that information to the
7 relevant States and communities.

8 “(f) STANDARDS FOR MITIGATION OFFERS.—The
9 program under this section for providing assistance for eli-
10 gible activities for severe repetitive loss properties shall be
11 subject to the following limitations:

12 “(1) PRIORITY.—In determining the properties
13 for which to provide assistance for eligible activities
14 under subsection (c), the Director shall provide as-
15 sistance for properties in the order that will result
16 in the greatest amount of savings to the National
17 Flood Insurance Fund in the shortest period of time,
18 in a manner consistent with the allocation formula
19 under paragraph (5).

20 “(2) OFFERS.—The Director shall provide as-
21 sistance in a manner that permits States and com-
22 munities to make offers to owners of severe repet-
23 itive loss properties to take eligible activities under
24 subsection (c) as soon as practicable.

1 “(3) CONSULTATION.—In determining for
 2 which eligible activities under subsection (c) to pro-
 3 vide assistance with respect to a severe repetitive
 4 loss property, the relevant States and communities
 5 shall consult, to the extent practicable, with the
 6 owner of the property.

7 “(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation,
 8 or order, establish a priority for funding eligible ac-
 9 tivities under this section that gives preference to
 10 one type or category of eligible activity over any
 11 other type or category of eligible activity.

12 “(5) ALLOCATION.—

13 “(A) IN GENERAL.—Subject to subpara-
 14 graphs (B) and (C), of the total amount made
 15 available for assistance under this section in
 16 any fiscal year, the Director shall allocate as-
 17 sistance to a State, and the communities lo-
 18 cated within that State, based upon the per-
 19 centage of the total number of severe repetitive
 20 loss properties located within that State.

21 “(B) REDISTRIBUTION.—Any funds allo-
 22 cated to a State, and the communities within
 23 the State, under subparagraph (A) that have
 24 not been obligated by the end of each fiscal
 25

1 year shall be redistributed by the Director to
 2 other States and communities to carry out eligi-
 3 ble activities in accordance with this section.

4 “(C) EXCEPTION.—Of the total amount
 5 made available for assistance under this section
 6 in any fiscal year, 10 percent shall be made
 7 available to communities that—

8 “(i) contain one or more severe repet-
 9 itive loss properties; and

10 “(ii) are located in States that receive
 11 little or no assistance, as determined by
 12 the Director, under the allocation formula
 13 under subparagraph (A).

14 “(6) NOTICE.—Upon making an offer to pro-
 15 vide assistance with respect to a property for any eli-
 16 gible activity under subsection (c), the State or com-
 17 munity shall notify each holder of a recorded inter-
 18 est on the property of such offer and activity.

19 “(g) PURCHASE OFFERS.—A State or community
 20 may take action under subsection (c)(2) to purchase a se-
 21 vere repetitive loss property only if the following require-
 22 ments are met:

23 “(1) USE OF PROPERTY.—The State or com-
 24 munity enters into an agreement with the Director
 25 that provides assurances that the property pur-

1 chased will be used in a manner that is consistent
 2 with the requirements of section 404(b)(2)(B) of the
 3 Robert T. Stafford Disaster Relief and Emergency
 4 Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for prop-
 5 erties acquired, accepted, or from which a structure
 6 will be removed pursuant to a project provided prop-
 7 erty acquisition and relocation assistance under such
 8 section 404(b).

9 “(2) OFFERS.—The Director shall provide as-
 10 sistance in a manner that permits States and com-
 11 munities to make offers to owners of severe repet-
 12 itive loss properties and of associated land to engage
 13 in eligible activities as soon as possible.

14 “(3) PURCHASE PRICE.—The amount of pur-
 15 chase offer is not less than the greatest of—

16 “(A) the amount of the original purchase
 17 price of the property, when purchased by the
 18 holder of the current policy of flood insurance
 19 under this title;

20 “(B) the total amount owed, at the time
 21 the offer to purchase is made, under any loan
 22 secured by a recorded interest on the property;
 23 and

24 “(C) an amount equal to the fair market
 25 value of the property immediately before the

1 most recent flood event affecting the property,
 2 or an amount equal to the current fair market
 3 value of the property.

4 “(4) COMPARABLE HOUSING PAYMENT.—If a
 5 purchase offer made under paragraph (2) is less
 6 than the cost of the homeowner-occupant to pur-
 7 chase a comparable replacement dwelling outside the
 8 flood hazard area in the same community, the Direc-
 9 tor shall make available an additional relocation pay-
 10 ment to the homeowner-occupant to apply to the dif-
 11 ference.

12 “(h) INCREASED PREMIUMS IN CASES OF REFUSAL
 13 TO MITIGATE.—

14 “(1) IN GENERAL.—In any case in which the
 15 owner of a severe repetitive loss property refuses an
 16 offer to take action under paragraph (1) or (2) of
 17 subsection (c) with respect to such property, the Di-
 18 rector shall—

19 “(A) notify each holder of a recorded inter-
 20 est on the property of such refusal; and

21 “(B) notwithstanding subsections (a)
 22 through (c) of section 1308, thereafter the
 23 chargeable premium rate with respect to the
 24 property shall be the amount equal to 150 per-
 25 cent of the chargeable rate for the property at

1 the time that the offer was made, as adjusted
 2 by any other premium adjustments otherwise
 3 applicable to the property and any subsequent
 4 increases pursuant to paragraph (2) and sub-
 5 ject to the limitation under paragraph (3).

6 “(2) INCREASED PREMIUMS UPON SUBSEQUENT
 7 FLOOD DAMAGE.—Notwithstanding subsections (a)
 8 through (c) of section 1308, if the owner of a severe
 9 repetitive loss property does not accept an offer to
 10 take action under paragraph (1) or (2) of subsection
 11 (c) with respect to such property and a claim pay-
 12 ment exceeding \$1,500 is made under flood insur-
 13 ance coverage under this title for damage to the
 14 property caused by a flood event occurring after
 15 such offer is made, thereafter the chargeable pre-
 16 mium rate with respect to the property shall be the
 17 amount equal to 150 percent of the chargeable rate
 18 for the property at the time of such flood event, as
 19 adjusted by any other premium adjustments other-
 20 wise applicable to the property and any subsequent
 21 increases pursuant to this paragraph and subject to
 22 the limitation under paragraph (3).

23 “(3) LIMITATION ON INCREASED PREMIUMS.—
 24 In no case may the chargeable premium rate for a
 25 severe repetitive loss property be increased pursuant

1 to this subsection to an amount exceeding the appli-
 2 cable estimated risk premium rate for the area (or
 3 subdivision thereof) under section 1307(a)(1).

4 “(4) TREATMENT OF DEDUCTIBLES.—Any in-
 5 crease in chargeable premium rates required under
 6 this subsection for a severe repetitive loss property
 7 may be carried out, to the extent appropriate, as de-
 8 termined by the Director, by adjusting any deduct-
 9 ible charged in connection with flood insurance cov-
 10 erage under this title for the property.

11 “(5) NOTICE OF CONTINUED OFFER.—Upon
 12 each renewal or modification of any flood insurance
 13 coverage under this title for a severe repetitive loss
 14 property, the Director shall notify the owner that
 15 the offer made pursuant to subsection (c) is still
 16 open.

17 “(6) APPEALS.—

18 “(A) IN GENERAL.—Any owner of a severe
 19 repetitive loss property may appeal a deter-
 20 mination of the Director to take action under
 21 paragraph (1)(B) or (2) with respect to such
 22 property, based only upon the following
 23 grounds:

24 “(i) As a result of such action, the
 25 owner of the property will not be able to

1 purchase a replacement primary residence
2 of comparable value and that is function-
3 ally equivalent.

4 “(ii) Based on independent informa-
5 tion, such as contractor estimates or ap-
6 praisals, the property owner believes that
7 the price offered for purchasing the prop-
8 erty is not an accurate estimation of the
9 value of the property, or the amount of
10 Federal funds offered for mitigation activi-
11 ties, when combined with funds from non-
12 Federal sources, will not cover the actual
13 cost of mitigation.

14 “(iii) As a result of such action, the
15 preservation or maintenance of any pre-
16 historic or historic district, site, building,
17 structure, or object included in, or eligible
18 for inclusion in, the National Register of
19 Historic Places will be interfered with, im-
20 paired, or disrupted.

21 “(iv) The flooding that resulted in the
22 flood insurance claims described in sub-
23 section (b)(2) for the property resulted
24 from significant actions by a third party in

1 violation of Federal, State, or local law, or-
2 dinance, or regulation.

3 “(v) In purchasing the property, the
4 owner relied upon flood insurance rate
5 maps of the Federal Emergency Manage-
6 ment Agency that were current at the time
7 and did not indicate that the property was
8 located in an area having special flood haz-
9 ards.

10 “(vi) The owner of the property,
11 based on independent information, such as
12 contractor estimates or other appraisals,
13 demonstrates that an alternative eligible
14 activity under subsection (c) is at least as
15 cost effective as the initial offer of assist-
16 ance.

17 “(B) PROCEDURE.—An appeal under this
18 paragraph of a determination of the Director
19 shall be made by filing, with the Director, a re-
20 quest for an appeal within 90 days after receiv-
21 ing notice of such determination. Upon receiv-
22 ing the request, the Director shall select, from
23 a list of independent third parties compiled by
24 the Director for such purpose, a party to hear
25 such appeal. Within 90 days after filing of the

request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

“(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

“(i) if a final determination is made in favor of the property owner under subparagraph (A) exist, the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c); and

“(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly

1 increase the chargeable risk premium rate
 2 for such property to the amount estab-
 3 lished pursuant to paragraph (1)(B) or
 4 (2), as applicable, and shall collect from
 5 the property owner the amount necessary
 6 to cover the stay of the applicability of
 7 such increased rates during the pendency
 8 of the appeal.

9 “(D) COSTS.—If the third party hearing
 10 an appeal under this paragraph is compensated
 11 for such service, the costs of such compensation
 12 shall be borne—

13 “(i) by the owner of the property re-
 14 questing the appeal, if the final determina-
 15 tion in the appeal is that the grounds
 16 under subparagraph (A) do not exist; and

17 “(ii) by the National Flood Insurance
 18 Fund, if such final determination is that
 19 the grounds under subparagraph (A) do
 20 exist.

21 “(E) REPORT.—Not later than 6 months
 22 after the date of the enactment of the Bunning-
 23 Bereuter-Blumenaur Flood Insurance Reform
 24 Act of 2004, the Director shall submit a report

1 describing the rules, procedures, and adminis-
 2 tration for appeals under this paragraph to—

3 “(i) the Committee on Banking,
 4 Housing, and Urban Affairs of the Senate;
 5 and

6 “(ii) the Committee on Financial
 7 Services of the House of Representatives.

8 “(i) DISCRETIONARY ACTIONS IN CASES OF FRAUDU-
 9 LENT CLAIMS.—If the Director determines that a fraudu-
 10 lent claim was made under flood insurance coverage under
 11 this title for a severe repetitive loss property, the Director
 12 may—

13 “(1) cancel the policy and deny the provision to
 14 such policyholder of any new flood insurance cov-
 15 erage under this title for the property; or

16 “(2) refuse to renew the policy with such policy-
 17 holder upon expiration and deny the provision of any
 18 new flood insurance coverage under this title to such
 19 policyholder for the property.

20 “(j) RULES.—

21 “(1) IN GENERAL.—The Director shall, by
 22 rule—

23 “(A) subject to subsection (f)(4), develop
 24 procedures for the distribution of funds to

1 States and communities to carry out eligible ac-
 2 tivities under this section; and

3 “(B) ensure that the procedures developed
 4 under paragraph (1)—

5 “(i) require the Director to notify
 6 States and communities of the availability
 7 of funding under this section, and that
 8 participation in the pilot program under
 9 this section is optional;

10 “(ii) provide that the Director may as-
 11 sist States and communities in identifying
 12 severe repetitive loss properties within
 13 States or communities;

14 “(iii) allow each State and community
 15 to select properties to be the subject of eli-
 16 gible activities, and the appropriate eligible
 17 activity to be performed with respect to
 18 each severe repetitive loss property; and

19 “(iv) require each State or community
 20 to submit a list of severe repetitive loss
 21 properties to the Director that the State or
 22 community would like to be the subject of
 23 eligible activities under this section.

24 “(2) CONSULTATION.—Not later than 90 days
 25 after the date of enactment of this Act, the Director

1 shall consult with State and local officials in car-
 2 rying out paragraph (1)(A), and provide an oppor-
 3 tunity for an oral presentation, on the record, of
 4 data and arguments from such officials.

5 “(k) FUNDING.—

6 “(1) IN GENERAL.—Pursuant to section
 7 1310(a)(8), the Director may use amounts from the
 8 National Flood Insurance Fund to provide assist-
 9 ance under this section in each of fiscal years 2005,
 10 2006, 2007, 2008, and 2009, except that the
 11 amount so used in each such fiscal year may not ex-
 12 ceed \$40,000,000 and shall remain available until
 13 expended. Notwithstanding any other provision of
 14 this title, amounts made available pursuant to this
 15 subsection shall not be subject to offsetting collec-
 16 tions through premium rates for flood insurance cov-
 17 erage under this title.

18 “(2) ADMINISTRATIVE EXPENSES.—Of the
 19 amounts made available under this subsection, the
 20 Director may use up to 5 percent for expenses asso-
 21 ciated with the administration of this section.

22 “(l) TERMINATION.—The Director may not provide
 23 assistance under this section to any State or community
 24 after September 30, 2009.”.

1 (b) AVAILABILITY OF NATIONAL FLOOD INSURANCE
 2 FUND AMOUNTS.—Section 1310(a) of the National Flood
 3 Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

4 (1) in paragraph (7), by striking “and” at the
 5 end; and

6 (2) by striking paragraph (8) and inserting the
 7 following:

8 “(8) for financial assistance under section
 9 1361A to States and communities for taking actions
 10 under such section with respect to severe repetitive
 11 loss properties, but only to the extent provided in
 12 section 1361A(i); and”.

13 **SEC. 103. AMENDMENTS TO EXISTING FLOOD MITIGATION**
 14 **ASSISTANCE PROGRAM.**

15 (a) STANDARD FOR APPROVAL OF MITIGATION
 16 PLANS.—Section 1366(e)(3) of the National Flood Insur-
 17 ance Act of 1968 (42 U.S.C. 4104c) is amended by adding
 18 at the end the following new sentence: “The Director may
 19 approve only mitigation plans that give priority for fund-
 20 ing to such properties, or to such subsets of properties,
 21 as are in the best interest of the National Flood Insurance
 22 Fund.”.

23 (b) PRIORITY FOR MITIGATION ASSISTANCE.—Sec-
 24 tion 1366(e) of the National Flood Insurance Act of 1968

1 (42 U.S.C. 4104e) is amended by striking paragraph (4)
 2 and inserting the following:

3 “(4) PRIORITY FOR MITIGATION ASSISTANCE.—

4 In providing grants under this subsection for mitiga-
 5 tion activities, the Director shall give first priority
 6 for funding to such properties, or to such subsets of
 7 such properties as the Director may establish, that
 8 the Director determines are in the best interests of
 9 the National Flood Insurance Fund and for which
 10 matching amounts under subsection (f) are avail-
 11 able.”.

12 (c) COORDINATION WITH STATES AND COMMU-
 13 NITIES.—Section 1366 of the National Flood Insurance
 14 Act of 1968 (42 U.S.C. 4104e) is amended by adding at
 15 the end the following:

16 “(m) COORDINATION WITH STATES AND COMMU-
 17 NITIES.—The Director shall, in consultation and coordina-
 18 tion with States and communities take such actions as are
 19 appropriate to encourage and improve participation in the
 20 national flood insurance program of owners of properties,
 21 including owners of properties that are not located in
 22 areas having special flood hazards (the 100-year flood-
 23 plain), but are located within flood prone areas.”.

24 (d) FUNDING.—Section 1367 of the National Flood
 25 Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

1 (1) in subsection (b), by striking paragraph (1)
 2 and inserting the following:

3 “(1) in each fiscal year, amounts from the Na-
 4 tional Flood Insurance Fund not exceeding
 5 \$40,000,000, to remain available until expended;”;

6 (2) by redesignating subsections (c) and (d) as
 7 subsections (d) and (e), respectively; and

8 (3) by inserting after subsection (b) the fol-
 9 lowing:

10 “(c) ADMINISTRATIVE EXPENSES.—The Director
 11 may use not more than 5 percent of amounts made avail-
 12 able under subsection (b) to cover salaries, expenses, and
 13 other administrative costs incurred by the Director to
 14 make grants and provide assistance under sections 1366
 15 and 1323.”.

16 (e) REDUCED COMMUNITY MATCH.—Section 1366(g)
 17 of the National Flood Insurance Act of 1968 (42 U.S.C.
 18 4104c(g)), is amended—

19 (2) by redesignating paragraph (2) as para-
 20 graph (3); and

21 (3) by inserting after paragraph (1) the fol-
 22 lowing:

23 “(2) REDUCED COMMUNITY MATCH.—With re-
 24 spect to any 1-year period in which assistance is
 25 made available under this section, the Director may

1 adjust the contribution required under paragraph
 2 (1) by any State, and for the communities located
 3 in that State, to not less than 10 percent of the cost
 4 of the activities for each severe repetitive loss prop-
 5 erty for which grant amounts are provided if, for
 6 such year—

7 “(A) the State has an approved State miti-
 8 gation plan meeting the requirements for haz-
 9 ard mitigation planning under section 322 of
 10 the Robert T. Stafford Disaster Relief and
 11 Emergency Assistance Act (42 U.S.C. 5165)
 12 that specifies how the State intends to reduce
 13 the number of severe repetitive loss properties;
 14 and

15 “(B) the Director determines, after con-
 16 sultation with the State, that the State has
 17 taken actions to reduce the number of such
 18 properties.”.

19 (f) NATIONAL FLOOD MITIGATION FUND.—Section
 20 1366(b)(2) of the National Flood Insurance Act of 1968
 21 (42 U.S.C. 4104c(b)(2)), is amended by striking
 22 “\$1,500,000” and inserting “7.5 percent of the available
 23 funds under this section”.

1 **SEC. 104. FEMA AUTHORITY TO FUND MITIGATION ACTIVI-**
 2 **TIES FOR INDIVIDUAL REPETITIVE CLAIMS**
 3 **PROPERTIES.**

4 (a) IN GENERAL.—Chapter I of the National Flood
 5 Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amend-
 6 ed by adding at the end the following:

7 **“SEC. 1323. GRANTS FOR REPETITIVE INSURANCE CLAIMS**
 8 **PROPERTIES.**

9 “(a) IN GENERAL.—The Director may provide fund-
 10 ing for mitigation actions that reduce flood damages to
 11 individual properties for which 1 or more claim payments
 12 for losses have been made under flood insurance coverage
 13 under this title, but only if the Director determines that—

14 “(1) such activities are in the best interest of
 15 the National Flood Insurance Fund; and

16 “(2) such activities cannot be funded under the
 17 program under section 1366 because—

18 “(A) the requirements of section 1366(g)
 19 are not being met by the State or community
 20 in which the property is located; or

21 “(B) the State or community does not
 22 have the capacity to manage such activities.

23 “(b) PRIORITY FOR WORST-CASE PROPERTIES.—In
 24 determining the properties for which funding is to be pro-
 25 vided under this section, the Director shall consult with
 26 the States in which such properties are located and pro-

1 vide assistance for properties in the order that will result
 2 in the greatest amount of savings to the National Flood
 3 Insurance Fund in the shortest period of time.”.

4 (b) AVAILABILITY OF NATIONAL FLOOD INSURANCE
 5 FUND AMOUNTS.—Section 1310(a) of the National Flood
 6 Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended
 7 by adding at the end the following:

8 “(9) for funding, not to exceed \$10,000,000 in
 9 any fiscal year, for mitigation actions under section
 10 1323, except that, notwithstanding any other provi-
 11 sion of this title, amounts made available pursuant
 12 to this paragraph shall not be subject to offsetting
 13 collections through premium rates for flood insur-
 14 ance coverage under this title.”.

15 **SEC. 105. AMENDMENTS TO ADDITIONAL COVERAGE FOR**
 16 **COMPLIANCE WITH LAND USE AND CONTROL**
 17 **MEASURES.**

18 (a) COMPLIANCE WITH LAND USE AND CONTROL
 19 MEASURES.—Section 1304(b) of the National Flood In-
 20 surance Act of 1968 (42 U.S.C. 4011(b)) is amended—

21 (1) in the matter preceding paragraph (1)—

22 (A) by striking “compliance” and inserting
 23 “implementing measures that are consistent”;
 24 and

1 (B) by inserting “by the community” after
 2 “established”;

3 (2) in paragraph (2), by striking “have flood
 4 damage in which the cost of repairs equals or ex-
 5 ceeds 50 percent of the value of the structure at the
 6 time of the flood event; and” and inserting “are sub-
 7 stantially damaged structures;”

8 (3) in paragraph (3), by striking “compliance
 9 with land use and control measures.” and inserting
 10 “the implementation of such measures; and”; and

11 (4) by inserting after paragraph (3) and before
 12 the last undesignated paragraph the following:

13 “(4) properties for which an offer of mitigation
 14 assistance is made under—

15 “(A) section 1366 (Flood Mitigation As-
 16 sistance Program);

17 “(B) section 1368 (Repetitive Loss Pri-
 18 ority Program and Individual Priority Property
 19 Program);

20 “(C) the Hazard Mitigation Grant Pro-
 21 gram authorized under section 404 of the Rob-
 22 ert T. Stafford Disaster Assistance and Emer-
 23 gency Relief Act (42 U.S.C. 5170c);

24 “(D) the Predisaster Hazard Mitigation
 25 Program under section 203 of the Robert T.

1 Stafford Disaster Assistance and Emergency
2 Relief Act (42 U.S.C. 5133); and

3 “(E) any programs authorized or for which
4 funds are appropriated to address any unmet
5 needs or for which supplemental funds are
6 made available.”.

7 (b) DEFINITIONS.—Section 1370(a) of the National
8 Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is
9 amended—

10 (1) by striking paragraph (7) and inserting the
11 following:

12 “(7) the term ‘repetitive loss structure’ means
13 a structure covered by a contract for flood insurance
14 that—

15 “(A) has incurred flood-related damage on
16 2 occasions, in which the cost of repair, on the
17 average, equaled or exceeded 25 percent of the
18 value of the structure at the time of each such
19 flood event; and

20 “(B) at the time of the second incidence of
21 flood-related damage, the contract for flood in-
22 surance contains increased cost of compliance
23 coverage.”;

24 (2) in paragraph (13), by striking “and” at the
25 end;

1 (3) in paragraph (14), by striking the period
2 and inserting “; and”; and

3 (4) by adding at the end the following:

4 “(15) the term ‘substantially damaged struc-
5 ture’ means a structure covered by a contract for
6 flood insurance that has incurred damage for which
7 the cost of repair exceeds an amount specified in any
8 regulation promulgated by the Director, or by a
9 community ordinance, whichever is lower.”.

10 **SEC. 106. ACTUARIAL RATE PROPERTIES.**

11 (a) IN GENERAL.—Section 1308 of the National
12 Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended
13 by striking subsection (c) and inserting the following:

14 “(c) ACTUARIAL RATE PROPERTIES.—Subject only
15 to the limitations provided under paragraphs (1) and (2),
16 the chargeable rate shall not be less than the applicable
17 estimated risk premium rate for such area (or subdivision
18 thereof) under section 1307(a)(1) with respect to the fol-
19 lowing properties:

20 “(1) POST-FIRM PROPERTIES.—Any property
21 the construction or substantial improvement of
22 which the Director determines has been started after
23 December 31, 1974, or started after the effective
24 date of the initial rate map published by the Direc-
25 tor under paragraph (2) of section 1360 for the area

1 in which such property is located, whichever is later,
 2 except that the chargeable rate for properties under
 3 this paragraph shall be subject to the limitation
 4 under subsection (e).

5 “(2) CERTAIN LEASED COASTAL AND RIVER
 6 PROPERTIES.—Any property leased from the Federal
 7 Government (including residential and nonresidential
 8 properties) that the Director determines is located
 9 on the river-facing side of any dike, levee, or other
 10 riverine flood control structure, or seaward of any
 11 seawall or other coastal flood control structure.”.

12 (b) INAPPLICABILITY OF ANNUAL LIMITATIONS ON
 13 PREMIUM INCREASES.—Section 1308(e) of the National
 14 Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is
 15 amended by striking “Notwithstanding” and inserting
 16 “Except with respect to properties described under para-
 17 graph (2) or (3) of subsection (c), and notwithstanding”.

18 **SEC. 107. GEOSPATIAL DIGITAL FLOOD HAZARD DATA.**

19 For the purposes of flood insurance and floodplain
 20 management activities conducted pursuant to the National
 21 Flood Insurance Program under the National Flood In-
 22 surance Act of 1968 (42 U.S.C. 4001 et seq.), geospatial
 23 digital flood hazard data distributed by the Federal Emer-
 24 gency Management Agency, or its designee, or the printed
 25 products derived from that data, are interchangeable and

1 legally equivalent for the determination of the location of
 2 1 in 100 year and 1 in 500 year flood planes, provided
 3 that all other geospatial data shown on the printed prod-
 4 uct meets or exceeds any accuracy standard promulgated
 5 by the Federal Emergency Management Agency.

6 **SEC. 108. REPLACEMENT OF MOBILE HOMES ON ORIGINAL**
 7 **SITES.**

8 Section 1315 of the National Flood Insurance Act of
 9 1968 (42 U.S.C. 4022) is amended by adding at the end
 10 the following:

11 “(c) REPLACEMENT OF MOBILE HOMES ON ORIGI-
 12 NAL SITES.—

13 “(1) COMMUNITY PARTICIPATION.—The place-
 14 ment of any mobile home on any site shall not affect
 15 the eligibility of any community to participate in the
 16 flood insurance program under this title and the
 17 Flood Disaster Protection Act of 1973 (notwith-
 18 standing that such placement may fail to comply
 19 with any elevation or flood damage mitigation re-
 20 quirements), if—

21 “(A) such mobile home was previously lo-
 22 cated on such site;

23 “(B) such mobile home was relocated from
 24 such site because of flooding that threatened or
 25 affected such site; and

1 “(C) such replacement is conducted not
 2 later than the expiration of the 180-day period
 3 that begins upon the subsidence (in the area of
 4 such site) of the body of water that flooded to
 5 a level considered lower than flood levels.

6 “(2) DEFINITION.—For purposes of this sub-
 7 section, the term ‘mobile home’ has the meaning
 8 given such term in the law of the State in which the
 9 mobile home is located.”.

10 **SEC. 109. REITERATION OF FEMA RESPONSIBILITY TO MAP**
 11 **MUDSLIDES.**

12 As directed in section 1360(b) of the National Flood
 13 Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director
 14 of the Federal Emergency Management Agency is again
 15 directed to accelerate the identification of risk zones with-
 16 in flood-prone and mudslide-prone areas, as provided by
 17 subsection (a)(2) of such section 1360, in order to make
 18 known the degree of hazard within each such zone at the
 19 earliest possible date.

20 **TITLE II—MISCELLANEOUS**
 21 **PROVISIONS**

22 **SEC. 201. DEFINITIONS.**

23 In this title, the following definitions shall apply:

1 (1) DIRECTOR.—The term “Director” means
2 the Director of the Federal Emergency Management
3 Agency.

4 (2) FLOOD INSURANCE POLICY.—The term
5 “flood insurance policy” means a flood insurance
6 policy issued under the National Flood Insurance
7 Act of 1968 (42 U.S.C. et seq.).

8 (3) PROGRAM.—The term “Program” means
9 the National Flood Insurance Program established
10 under the National Flood Insurance Act of 1968 (42
11 U.S.C. 4001 et seq.).

12 **SEC. 202. SUPPLEMENTAL FORMS.**

13 (a) IN GENERAL.—Not later than 6 months after the
14 date of enactment of this Act, the Director shall develop
15 supplemental forms to be issued in conjunction with the
16 issuance of a flood insurance policy that set forth, in sim-
17 ple terms—

18 (1) the exact coverages being purchased by a
19 policyholder;

20 (2) any exclusions from coverage that apply to
21 the coverages purchased;

22 (3) an explanation, including illustrations, of
23 how lost items and damages will be valued under the
24 policy at the time of loss;

1 (4) the number and dollar value of claims filed
 2 under a flood insurance policy over the life of the
 3 property, and the effect, under the National Flood
 4 Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of
 5 the filing of any further claims under a flood insur-
 6 ance policy with respect to that property; and

7 (5) any other information that the Director de-
 8 termines will be helpful to policyholders in under-
 9 standing flood insurance coverage.

10 (b) DISTRIBUTION.—The forms developed under sub-
 11 section (a) shall be given to—

12 (1) all holders of a flood insurance policy at the
 13 time of purchase and renewal; and

14 (2) insurance companies and agents that are
 15 authorized to sell flood insurance policies.

16 **SEC. 203. ACKNOWLEDGEMENT FORM.**

17 (a) IN GENERAL.—Not later than 6 months after the
 18 date of enactment of this Act, the Director shall develop
 19 an acknowledgement form to be signed by the purchaser
 20 of a flood insurance policy that contains—

21 (1) an acknowledgement that the purchaser has
 22 received a copy of the standard flood insurance pol-
 23 icy, and any forms developed under section 202; and

24 (2) an acknowledgement that the purchaser has
 25 been told that the contents of a property or dwelling

1 are not covered under the terms of the standard
 2 flood insurance policy, and that the policyholder has
 3 the option to purchase additional coverage for such
 4 contents.

5 (b) DISTRIBUTION.—Copies of an acknowledgement
 6 form executed under subsection (a) shall be made available
 7 to the purchaser and the Director.

8 **SEC. 204. FLOOD INSURANCE CLAIMS HANDBOOK.**

9 (a) IN GENERAL.—Not later than 6 months after the
 10 date of enactment of this Act, the Director shall develop
 11 a flood insurance claims handbook that contains—

12 (1) a description of the procedures to be fol-
 13 lowed to file a claim under the Program, including
 14 how to pursue a claim to completion;

15 (2) how to file supplementary claims, proof of
 16 loss, and any other information relating to the filing
 17 of claims under the Program; and

18 (3) detailed information regarding the appeals
 19 process established under section 205.

20 (b) DISTRIBUTION.—The handbook developed under
 21 subsection (a) shall be made available to—

22 (1) each insurance company and agent author-
 23 ized to sell flood insurance policies; and

1 (2) each purchaser, at the time of purchase and
2 renewal, of a flood insurance policy, and at the time
3 of any flood loss sustained by such purchaser.

4 **SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD IN-**
5 **SURANCE COVERAGE.**

6 Not later than 6 months after the date of enactment
7 of this Act, the Director shall, by regulation, establish an
8 appeals process through which holders of a flood insurance
9 policy may appeal the decisions, with respect to claims,
10 proofs of loss, and loss estimates relating to such flood
11 insurance policy, of—

12 (1) any insurance agent or adjuster, or insur-
13 ance company; or

14 (2) any employee or contractor of the Federal
15 Emergency Management Agency.

16 **SEC. 206. STUDY AND REPORT ON USE OF COST COMPLI-**
17 **ANCE COVERAGE.**

18 Not later than 1 year after the date of enactment
19 of this Act, the Director of the Federal Emergency Man-
20 agement Agency shall submit to Congress a report that
21 sets forth—

22 (1) the use of cost of compliance coverage
23 under section 1304(b) of the National Flood Insur-
24 ance Act of 1968 (42 U.S.C. 4011(b)) in connection
25 with flood insurance policies;

1 (2) any barriers to policyholders using the
2 funds provided by cost of compliance coverage under
3 that section 1304(b) under a flood insurance policy,
4 and recommendations to address those barriers; and

5 (3) the steps that the Federal Emergency Man-
6 agement Agency has taken to ensure that funds paid
7 for cost of compliance coverage under that section
8 1304(b) are being used to lessen the burdens on all
9 homeowners and the Program.

10 **SEC. 207. MINIMUM TRAINING AND EDUCATION REQUIRE-**
11 **MENTS.**

12 The Director of the Federal Emergency Management
13 Agency shall, in cooperation with the insurance industry,
14 State insurance regulators, and other interested parties—

15 (1) establish minimum training and education
16 requirements for all insurance agents who sell flood
17 insurance policies; and

18 (2) not later than 6 months after the date of
19 enactment of this Act, publish these requirements in
20 the Federal Register, and inform insurance compa-
21 nies and agents of the requirements.

22 **SEC. 208. GAO STUDY AND REPORT.**

23 (a) STUDY.—The Comptroller General of the United
24 States shall conduct a study of—

1 (1) the adequacy of the scope of coverage pro-
 2 vided under flood insurance policies in meeting the
 3 intended goal of Congress that flood victims be re-
 4 stored to their pre-flood conditions, and any rec-
 5 ommendations to ensure that goal is being met;

6 (2) the adequacy of payments to flood victims
 7 under flood insurance policies; and

8 (3) the practices of the Federal Emergency
 9 Management Agency and insurance adjusters in esti-
 10 mating losses incurred during a flood, and how such
 11 practices affect the adequacy of payments to flood
 12 victims.

13 (b) REPORT.—Not later than 1 year after the date
 14 of enactment of this Act, the Comptroller General shall
 15 submit to Congress a report regarding the results of the
 16 study under subsection (a).

17 **SEC. 209. PROSPECTIVE PAYMENT OF FLOOD INSURANCE**
 18 **PREMIUMS.**

19 Section 1308 of the National Flood Insurance Act of
 20 1968 (42 U.S.C. 4015) is amended by adding at the end
 21 the following:

22 “(f) ADJUSTMENT OF PREMIUM.—Notwithstanding
 23 any other provision of law, if the Director determines that
 24 the holder of a flood insurance policy issued under this
 25 Act is paying a lower premium than is required under this

1 section due to an error in the flood plain determination,
 2 the Director may only prospectively charge the higher pre-
 3 mium rate.”.

4 **SEC. 210. REPORT ON CHANGES TO FEE SCHEDULE OR FEE**
 5 **PAYMENT ARRANGEMENTS.**

6 Not later than 3 months after the date of enactment
 7 of this Act, the Director shall submit a report on any
 8 changes or modifications made to the fee schedule or fee
 9 payment arrangements between the Federal Emergency
 10 Management Agency and insurance adjusters who provide
 11 services with respect to flood insurance policies to—

12 (1) the Committee on Banking, Housing, and
 13 Urban Affairs of the Senate; and

14 (2) the Committee on Financial Services of the
 15 House of Representatives.

Passed the Senate June 15, 2004.

Attest:

Secretary.

108TH CONGRESS
2D Session

S. 2238

AN ACT

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.